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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 72

THE GROVER AND BAKER SEWING MACHINE COMPANY,
PLAINTIFF IN ERROR,

vs.

WILLIAM P. RADCLIFFE.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

FILED AUGUST 5, 1887.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 365.

THE GROVER AND BAKER SEWING MACHINE COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM P. RADCLIFFE.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, FEBRUARY 24, 1890.

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1 STATE OF MARYLAND, *set:*

At a court of appeals of the State of Maryland begun and held for the said State at the city of Annapolis on the second Monday of January, it being the tenth day of said month, in the year of our Lord eighteen hundred and eighty-seven, and of the Independence of the United States of America the one hundred and eleventh—present, the Honorable Richard H. Alvey, chief judge, and associate judges, seven, Levin T. H. Irving, John M. Robinson, George Yellott, Oliver Miller, John Ritchie, Frederick Stone, Wm. Shepard Bryan—among other were the following proceedings, to wit:

2 & 3 In the Circuit Court for Cecil County.

GROVER AND BAKER SEWING MACHINE COMPANY
vs.
WILLIAM P. RADCLIFFE, Garnishee of James Benge and John Benge.

Docket Entries.

Attachment on warrant for $2,300.00 (non-resident), record, affidavit, warrant, and short note f'd Feb'y 23, 1884.

Same day, exct. attachment, summons, and copy of short note, returnable third Monday in March, 1884.

Attachment returned: "Attached as per schedule within and summoned Wm. P. Radcliff, garnishee, and set up copy of short note at court-house door this 25th day of Feb., 1884."

Summons returned "*non est.*"

Garnishee appears by attorney.

Rule plea.

Continued to June term, 1884.

July 14, 1884.—Pleas f'd by garnishee.

Rule replication.

Continued to Sept. term, 1884.

Sept. 25, 1884.—Demurrer to 3d plea and demurrer overruled; same day, special replication to first plea and general replication to second, third, fourth, and fifth pleas; issues joined on replications by defendant; jury sworn; trial; bill of exceptions f'd by plaintiff; verdict for the defendant and judgment on the verdict with costs; appeal prayed by plaintiff and granted; record transmitted to court of appeals.

June 2, 1885—Opinion and order of the court of appeals f'd reversing the judgment and awarding a new trial.

Sept. term, 1885.—Motion and leave to def't to issue a commission to take testimony to such person and place as shall be agreed on.

Motion and rule on pl'ff; security for costs and charges.

Dec. 8, 1885.—Interrogatories f'd by def't and copy delivered to pl'ff's att'y.

Continued to Dec. term, 1885.

Dec. term, 1885.—Job Haines accepted as security for costs and charges.

Dec. 30, 1885.—Motion to quash writ f'd and motion withdrawn.

4 Jan'y 25, 1886.—Additional pleas 6, 7, and 8 f'd.

General replication to 6, 7, and 8th pleas; issue joined.

Motion and leave to pl'ff to withdraw repl. to 2, 3, 5, 7, and 8th pleas and repl. withdrawn.

Demurrer to 2, 3, 5, 7, and 8th pleas.

Motion and leave to def't to withdraw 7 and 8th pleas and same withdrawn.

Motion and leave to pl'ff to withdraw gen'l repl. to 6th plea and same withdrawn.

Demurrer to 6th plea.

Demurrer to 5th plea ruled good.

Demurrer to (to) 2, 3, and 6th pleas overruled.

Gen'l repl. to 2, 3, and 6th pleas and special repl. to 2 and 6th pleas.

Rejoinder of def't to sp'l repl. to 2 and 6th pleas.

Demurrer to rejoinder to sp'l repl. to 2 and 6th pleas and demurrer overruled.

Surrejoinder to def't's rejoinder to sp'l repl. to 2 and 6th pleas and issue joined by def'ts.

Issue joined on gen'l repl. to 2, 3, and 6th pleas.

Judgment for pl'ff on sp'l repl. to 1st plea, that pl'ff hath perfected his record.

Jury sworn; bill of exceptions f'd by pl't'ff.

Verdict for def't on February 15, 1886.

Same day, judgment on the verdict.

M'ch 22, 1886.—Appeal prayed by plaintiff and granted.

Short Note or Nar.

In the Circuit Court for Cecil County.

GROVER AND BAKER SEWING MACHINE COMPANY
vs.
JAMES BENGE and JOHN BENGE. } Action of Debt.

This suit is instituted to recover the sum of twenty-three hundred dollars from the defendants due and owing from the defendants to the plaintiff on and by virtue of a certain judgment which the plaintiff, on the third day of January, in the year eighteen hundred and seventy-four, in the court of common pleas in and for the county of Chester, in the State of Pennsylvania, one of the United States of America, by the judgment of the said court, recovered against the defendants for the sum of three thousand dollars; which said judgment is still in force and unsatisfied.

W. T. WARBURTON, JR.,
ALBERT CONSTABLE,
Pl'ff's Att'ys.

And the said William P. Radcliff, garnishee in this action, by James T. McCullough and Henry M. McCullough, his attorneys, comes and defends the wrong and injury when, &c., and, in behalf of the said James Benge and John Benge, the defendants named in the same attachment, says—

1st. That there is not any record of the said supposed recovery and judgment in the said short note mentioned, remaining in the court of common pleas for the county of Chester, in the State of Pennsylvania, in manner and form as the said plaintiffs have above in their said short note alleged.

2nd. And the said garnishee, for a further plea in behalf of the said James Benge and John Benge, says that the said court had not jurisdiction over the persons of the said James Benge and John Benge or either of them.

3rd. And, for a further plea in behalf of the said James Benge and John Benge, the said garnishee says that the said pretended judgment and recovery was obtained by the said plaintiffs against the said James Benge and John Benge by fraud and covin of the said plaintiffs.

4th. And, for further plea in behalf of the said James Benge and John Benge, the said garnishee says that the real estate and property mentioned and described in the return of the sheriff as seized, taken, and attached as the property and real estate of the said James Benge and John Benge is not the property of them, the said James Benge and John Benge, nor have they or either of them any right, title, or interest in or to the tracts, parcels, or pieces of land mentioned and described in said return as seized, taken, and attached by the said sheriff by virtue of said attachment, nor had they, the said James Benge and John Benge, or either of them, when said attachment was issued or levied, any right, title, or interest in said tracts, parcels, or pieces of land.

5th. The garnishee, for a further plea in this behalf, says that the supposed judgment filed in this case is not binding upon the said John Benge and James Benge, because there was no personal service upon them nor was any appearance in their behalf entered by their authority.

6th. And, for a further plea in that behalf, the garnishee says that the supposed judgment, a copy of which is filed in this case, upon which said attachment issued, is not binding upon the said John Benge and James Benge, because by the laws of the State of Pennsylvania no authority or power was given authorizing the prothonotary of the said court of common pleas to enter said judgment against the said James Benge and John Benge or either of them.

J. T. McCULLOUGH,
H. M. McCULLOUGH,
Att'ys for Garnishee.

Special Replications.

And the plaintiff, for a replication to the defendants' first plea, says that there is a record of the said judgment remaining in the said court of common pleas, as the plaintiff has above alleged, and the plaintiff prays that the said record may be inspected by the court here.

And, for a second replication to the second and sixth pleas, the plaintiff says that on the 16th day of March, 1872, the defendants executed and delivered to the plaintiff their bond for three thousand dollars, payable on demand, and containing therein a warrant of attorney authorizing any attorney of any court of record of the State of New York or any other State to confess judgment against them and in favor of the plaintiff for said sum, with a release of errors; and the plaintiff says that in virtue of said warrant of attorney and in accordance with the law of the State of Pennsylvania and the practice of her courts the said judgment in the declaration or short note mentioned was recovered, as therein alleged; and the plaintiff further says that the said court of common pleas in and for the county of Chester is and was at the time said judgment was recovered a superior court of record of said Commonwealth of Pennsylvania, one of the United States of America, having general jurisdiction.

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Rejoinder to Special Replication.

And the said garnishee, in behalf of the said defendants, as to the second replication of the plaintiff to the second and sixth pleas of the defendant, says that the plaintiff ought not, by reason of anything by the plaintiff in that replication alleged, to have or maintain the aforesaid action against them, because said garnishee says that though it is true that said defendants did execute and deliver a certain bond for three thousand dollars, as in plaintiff's replication alleged, yet the said garnishee says that said bond was not of the tenor and effect and in manner and form as in said replication set forth; that the sum of three thousand dollars named in the bond delivered by the defendants to the plaintiff was and is the penal sum named in said bond, and that it appears by the copy thereof contained in the record upon which this suit is brought that the obligation to pay said sum of three thousand dollars would be void if the defendant, James Benge, his heirs, executors, or administrators, should well and truly pay or cause to be paid to the said plaintiff the full amount of each and every liability incurred by the said James Benge to or with said plaintiff for and on account of all sewing-machines and all sewing-machine findings, silks, or threads or other articles, including promissory notes or other property that might from time to time thereafter be sold, consigned, supplied, or otherwise entrusted to said James Benge by the said plaintiff, upon his orders or by his acceptance, with or without notice to said John Benge at the time or times when each and every liability should

become due and payable or at such time or times for which payment of the same might thereafter, with or without notice to the said John Benge, be extended; and although it is also true that the said bond contained a warrant of attorney authorizing any attorney of any court of record in the State of New York or any other State to confess a judgment against said defendants, yet the garnishee says that the supposed judgment contained in said record was not entered by virtue of any authority contained in said warrant of attorney and bond by an attorney of any court of record, and that the law of the State of Pennsylvania and the practice of her courts did not authorize the rendering of said judgments in manner and form as the same is set forth in the said record filed with the short note and attachment in this case; that it appears by said record that the judgment was in fact entered by the prothonotary of the court of common pleas of Chester county aforesaid by virtue of a certain statement among the statutes of said State of Pennsylvania and in force in said State from the year 1806 as follows: "It shall be the duty of the prothonotary of any court of record within this Commonwealth, on application of any person being the original holder (or assignee of such holder) of a note, bond, or other instrument of writing in which judgment is confessed or containing a warrant for an attorney-at-law or other person to confess judgment, to enter judgment against the person or persons who executed the same for the amount which from the face of the instru-
7 ment may appear to be due without the agency of an attorney or declaration filed, with such stay of execution as may be therein mentioned, for the sum of one dollar, to be paid by the defendant, particularly entering on his docket the date and tenor of the instrument of writing on which the judgment may be founded, which shall have the same force and effect as if a declaration had been filed and judgment confessed by an attorney or judgment confessed in open court and in term time."

Yet the garnishee saith that said judgment was not entered by the said prothonotary in accordance with the said statute or any other of the laws of the said State; that the said sum of three thousand dollars, for which said pretended judgment was entered, did not appear from the face of said bond to be due thereon, and it does not appear from the face of said bond that any sum of money was due to the plaintiff from the defendants from the default of the defendants or either of them in the premises.

J. T. McCULLOUGH,
Att'y for Garnishee.

Bill of Exceptions.

At the trial of this case the plaintiff, to maintain the issues on its part joined, offered and read in evidence a record from the court of common pleas in and for the county of Chester, in the State of Pennsylvania, as follows:

COMMONWEALTH OF PENNSYLVANIA, } ss:
Chester County,

Among the records and proceedings of the court of common pleas in and for the county of Chester, in the State of Pennsylvania, it is thus contained:

GROVER & BAKER SEWING MACHINE Company, Boston, Mass., and Philadelphia,
vs.
JAMES BENGE, West Chester; JOHN BENGE, Kimbleville, Md.

Judgment Docket. Entries of October Term, 1873. Debt, *Sans Breve*, $3,000. ($1.50 Stamp.)

I do hereby enter judgment against the defendants and in favor of the plaintiff in this cause for the sum of three thousand dollars, lawfull money, debt, besides costs, &c., on a bond and warrant of attorney to confess judgment, dated March sixteenth, A. D. one thousand eight hundred and seventy-two, conditioned that if the above-named James Benge, his heirs, executors, or administrators, shall well and truly pay or cause to be paid to the said Grover & Baker Sewing Machine Company the full amount of each and every liability incurred or to be incurred by him, the said James Benge, to or with the said Grover & Baker Sewing Machine Company for and on account of all sewing-machines and all sewing-machine findings, silks, and threads or other articles, including promissory notes and other property that may from time to time hereafter be sold, consigned, supplied, or otherwise intrusted to him, the said James Benge, by the said Grover & Baker Sewing Machine Company, upon his orders or by his acceptance, with or without notice to the said John Benge, at the time or times when each and every liability shall become due and payable or at such time and times for which payment of the same may hereafter, with or
8 without notice to the said John Benge, be extended, then this obligation to be void. This obligation is intended to operate as a continuing security for the payment, when the same shall become due and be demanded, of all and every liability incurred to and with the said Grover & Baker Sewing Machine Company by the said James Benge aforesaid to the amount not exceeding the limit of this bond.

January 3rd, 1874.—Judgment, $3,000.00.

JOHN A. RUPERT, *Prot.*

April 29th, 1875.—By release filed this day all that messuage and lot of land situated on the south side of Market St. between Church and Darlington streets, in the borough of West Chester, Pa., is released from the lien and operation of this judgment. (For particular description of property released see release filed.)

Fi. fa. No. 86 to Oct. T., 1875; *vendi exp.* No. 100 to Jan. T., 1876.

Know all men by these presents that James Benge, of West Chester, Pa.; John Benge, of Kimbleville, Cecil county, Md., are hereby held and firmly bound unto the Grover & Baker Sewing Machine

Company, a corporation duly established by law in the city of [illegible] ton, State of Massachusetts, also doing business at Philadelphia, State of Pennsylvania, in the sum of three thousand dollars, lawful money of the United States of America, to be paid to the said Grover & Baker Sewing Machine Company, its legal representatives or assigns; for which payment, well and truly to be made, we bind ourselves, heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals. Dated the 16th day of March, one thousand eight hundred and seventy-two; and we hereby authorize any attorney of any court of record in the State of New York or any other State to confess judgment against us for the said sum, with release of errors, &c.

Whereas the above-named James Benge, at the special instance and request of the above-bound John Benge, has obtained a credit with the said Grover & Baker Sewing Machine Company for machines of their manufacture and for sewing-machine findings, silks, and threads manufactured and dealt in by said Grover & Baker Sewing Machine Company and for other articles, including promissory notes and other property to be hereafter supplied to him, the said James Benge:

Now, the condition of this obligation is such that if the above-bound James Benge, his heirs, executors, or administrators, shall well and truly pay or cause to be paid to the said Grover & Baker Sewing Machine Company the full amount of each and every liability incurred by him, the said James Benge, to or with the said Grover & Baker Sewing Machine Company for and on account of all sewing-machines and all sewing-machine findings, silks, and threads or other articles, including promissory notes and other property that may from time to time hereafter be sold, consigned, supplied, or otherwise entrusted to him, the said James Benge, by the said Grover & Baker Sewing Machine Company, upon his orders or by his acceptance, with or without notice to the said John Benge, at the time or times when each and every liability shall become due and payable or at such time and times for which payment of the same may hereafter, with or without notice to the said John Benge, be extended, then this obligation to be void.

9 This obligation is intended to operate as a continuing security for the payment, when the same shall become due and be demanded, of all and every liability incurred to and with the said Grover & Baker Sewing Machine Company by the said James Benge, as aforesaid, to the amount not exceeding the limit of this bond, three thousand dollars.

JAMES BENGE. [SEAL.]
JOHN BENGE. [SEAL.]

Signed, sealed, and delivered in the presence of—
G. S. G. HARARY.

[$1.50 revenue stamp.]

In C. P. of Chester County.

THE GROVER AND BAKER SEWING MACHINE COMPANY *vs.* JAMES BENGE, JOHN BENGE. } See Judgment Entered in J. 2, page 583. Debt, $2,916.04. Int. from Sept. 29, '75.

Issue *fi. fa.* against defendants, returnable according to law.

Yours truly, CHARLES H. PENNYPACKER, *Pl'ff's Att'y.*

Sept. 29, 1875.

To John A. Rupert, prot'y.

CHESTER COUNTY, *ss:*

[SEAL.] The Commonwealth of Pennsylvania to the sheriff of Chester county, Greeting:

We command you that of the goods and chattels, lands and tenements, of James Benge and John Benge, late of your county, for your bailiwick, you cause to be levied, as well a certain debt of three thousand dollars, lawful money of Pennsylvania, *with* Grover and Baker Sewing Machine Company, lately in our court of common pleas, before our judge, at West Chester, recovered against them, as also seventy-two shillings, which to the said Grover and Baker Sewing Machine Company in our said court were adjudged for the damage with-n sustained by occasion of the detention of that debt, whereof the said James Benge and John Benge are convict, as appears of record, &c., and have you that money before our judge, at West Chester, at our county court of common pleas, there to be held the last Monday in October next, to render to the said Grover and Baker Sewing Machine Company for the debts and demands aforesaid; and have you then and there this writ.

Witness the Hon. William Butler, Esqr., president of our said court, at West Chester, the fourteenth day of August, in the year of our Lord one thousand eight hundred and seventy-five.

JOHN A. RUPERT, *Prothonotary.*

To the honorable the judges within named:

Real estate levied upon and condemned; let sheriff levy and inquisition for valuation and condemnation hereto annexed. So answers—

WILLIAM B. MORRISON, *Sheriff.*

10 In the Common Pleas of Chester County.

GROVER AND BAKER SEWING MACHINE COMPANY *vs.* JAMES BENGE, JOHN BENGE. } *Fieri facias* to October Term, 1875. No. 86.

By virtue of the above-stated writ of *fieri facias* in the above case I have s-ized and taken in execution all that certain messuage, tract,

or parcel of land situated in the township of Franklin, county of Chester and State of Pennsylvania, bounded and described as follows: By lands of John Jones, James Elias, David Mackey, and by the boundary line between the State of Pennsylvania and Maryland, containing about 30 acres of land, more or less, with the appurtenances.

And notice is hereby given that an inquisition will be held, agreeably to law, for condemnation and valuation of said premises, at the sheriff's office, in the borough of West Chester, on the 22d day of October, A. D. 1875, at three o'clock in the afternoon of that day. So answers—

WILLIAM B. MORRISON, *Sheriff.*

To the honorable judge named in the annexed writ:

At the day and place in said writ contained I do certify that by virtue of said writ, to me directed, I have seized and taken in execution all that certain messuage, tract, or parcel of land situated in the township of Franklin, county of Chester, and State of Pennsylvania, bounded and described as follows: By land of John Jones, James Elias, David Mackey, and by the boundary line between the States of Pennsylvania and Maryland, containing about 30 acres of land, more or less, with the appurtenances, late the estate of John Benge, one of the defendants in said writ named, which remain in my hands unsold for want of buyers, so that I cannot have the moneys in said writ mentioned at the day and place therein contained, to render to the said Grover and Baker Sewing Machine Company the debt and damages therein specified, as thereby I was commanded. The residue of the execution of the said writ appears by the inquisition annexed. So answers—

WILLIAM B. MORRISON, *Sheriff.*

Inquisition indented and taken at West Chester the twenty-second day of October, A. D. one thousand eight hundred and seventy-five, before William B. Morrison, high sheriff of the county of Chester, by virtue of a writ of the Commonwealth of Pennsylvania to me directed and to this inquisition annexed, by the oaths and affirmations of the jurors whose names and seals are hereunto annexed, good and lawful men of the county aforesaid, who, upon their oaths and affirmations aforesaid, respectively, do say that the rents, issues, and profits of the within-described property by me, the said sheriff, taken in execution by virtue of said writ, wherein Grover and Baker Sewing Machine Company are plaintiffs and James Benge and John Benge, defendants, are not a clear value beyond all reprises sufficient within the space of seven years to satisfy the debt and damage in the writ aforesaid mentioned—Grover and Baker Sewing Machine Company *vs.* James Benge and John Benge.

In testimony whereof as well I, the said sheriff, as the inquest

11 aforesaid to this inquisition, have interchangeably set our hands and seals the day and year first above written.

WILLIAM B. MORRISON, [SEAL.]
Sheriff.

S. M. PAYSON. [SEAL.]
A. MARSHALL. [SEAL.]
T. T. SMITH. [SEAL.]
S. W. MORRISON. [SEAL.]
EBER ANDERSON. [SEAL.]
J. K. HOLLINGSWORTH. [SEAL.]
JOS. F. HILL. [SEAL.]
WM. E. LEWIS. [SEAL.]
ZIBA DARLINGTON. [SEAL.]
S. M. PAINTER. [SEAL.]
N. STRICKLAND. [SEAL.]
P. HOOPES. [SEAL.]

In Common Pleas of Chester County.

GROVER AND BAKER SEWING MACHINE COMPANY *vs.* JAMES BENGE and JOHN BENGE. } *Fi. fa.* No. 86, to October Term, 1875.

Issue *venditione exponas* against defendants, returnable according to law.

Yours truly, CHAS. H. PENNYPACKER.

January 8th, '76.
To Hannum Baldwin, prot'y.

CHESTER COUNTY, *ss:*

[SEAL.] The Commonwealth of Pennsylvania to the sheriff of Chester county, Greeting:

Whereas, by our writ of *fieri facias* tested the fourteenth day of August last past, we commanded you that of the goods and chattels, lands and tenements, of James Benge and John Benge, late of your county, in your bailiwick, you should cause to be levied as well a certain debt of three thousand dollars, lawful money of Pennsylvania, which Grover and Baker Sewing Machine Company, lately in our county court of common pleas, before our court, at West Chester, recovered against them, as also seventy-two shillings, which to the said Grover and Baker Sewing Machine Company, in our same court, were adjudged for their damages which they sustained by occasion of the detention of that debt, whereof the said James Benge and John Benge are convict, as appeared of record, &c., and that you should have that money before our judge, at West Chester, at our county court of common pleas, there to be held on a day certain in our said writ contained, to render the said Grover and Baker Sewing Machine Company for its debt and damages afore-

said, and that you should have then and there that writ, on which said day you to our said judge did return that by virtue of said writ to you directed you have seized and taken in execution all that certain messuage, tract, or parcel of land situated in the township of Franklin, county of Chester and State of Pennsylvania, bounded and described as follows: By lands of John Jones, James Elias, David Mackey, and by the boundary line between the States of Pennsylvania and Maryland, containing about 30 acres of land, more or less, with the appurtenances, late the estate of John Benge, one of the defendants, which remained in your hands unsold for want of buyers, so that you could not have that money in the said writ specified before our said judge, &c., as thereby you were commanded, and that the residue of the execution of our said writ appeared in a certain schedule or inquisition thereunto annexed,
12 whereby it appears by the oaths and solemn affirmations of six free and lawful men of said county that the clear profits of the aforesaid lands and premises, with the appurtenances, as above described, are not beyond all reprises sufficient to satisfy the debt and damages in the said writ mentioned within the space of seven years—

We therefore command you that of that certain messuage, tract, or parcel of land, with the appurtenances, by you in form aforesaid seized and taken in execution, without delay you expose to sale and have you that money before our judge, at West Chester, at our county court of common pleas, there to — held the last Monday in January next, to render to the said Grover and Baker Sewing Machine Company for its debts and damages aforesaid, and have you then and there this writ.

Witness the Hon. J. Smith Futhey, presiding judge of our said court, at West Chester, the eleventh day of December, A. D. one thousand eight hundred and seventy-five.

HANNUM BALDWIN,
Prothonotary.

To the honorable the judges within named:

In obedience to and by virtue of the within writ, and after due, fair, and public notice of the time and place of sale had been by me given, I did, on the twenty-seventh day of January, A. D. 1876, expose the premises within mentioned to sale by public vendue or outcry and sold the same to Grover and Baker Sewing Machine Company for the sum of sixty-five dollars ($65.00), they being the highest and best bidders and that the highest and best price bidden for the same, from and out of which sum of sixty-five dollars I deducted and retained for costs and expenses the sum of fifty-six dollars and eighty cents ($56.80), leaving a balance of money remaining in my hands amounting to the sum of eight dollars and twenty cents ($8.20); which said moneys I have now ready before the judges to render as within I am commanded. So answers—

WILLIAM B. MORRISON, *Sheriff.*

(Here follows the certificate of prothonotary of its being a true

record and the attestation of the judge in the usual form, as required by act of Congress.

—— ——, *Clerk.*)

Plaintiff then offered and read in evidence a statute of the State of Pennsylvania passed in the year 1806, as follows:

It shall be the duty of the prothonotary of any court of record within this Commonwealth, on the application of any person being the original holder (or assignee of such holder) of a note, bond, or other instrument of writing in which judgment is confessed or containing a warrant for an attorney-at-law or other person to confess judgment, to enter judgment against the person or persons who executed the same for the amount which from the face of the instrument may appear to be due, without the agency of an attorney or declaration filed, with such stay of execution as may be therein mentioned, for the fee of one dollar, to be paid by the defendant, particularly entering on his docket the date and tenor of the instrument of writing on which the judgment may be founded, which shall have the same force and effect as if a declaration had been filed and judgment confessed by an attorney or judgment obtained in open court and in term time, and the defendant shall not
13 be compelled to pay any costs or fee to the plaintiff's attorney when judgment is entered on any instrument of writing as aforesaid.

Plaintiff then offered in evidence and read to the jury two deeds, as follows:

A deed from Levi Baldwin and Jane Baldwin, his wife, to John Benge, all of Cecil county, dated the 16th day of March (1841), the consideration being $2,950.00, conveying in fee simple a tract of land partly in Cecil county, Maryland, and partly in Chester county, Pennsylvania, containing one hundred and thirty acres and two perches, more or less.

A deed from Arthur S. Edie and Catharine J. Edie, his wife, to John Benge, all of Cecil county, dated the 10th day of October, 1848, the consideration being $425, *or* conveying in fee simple a tract of land lying in Cecil county, containing thirty-six acres two roods and ten perches, more or less.

The following agreement as to the Pennsylvania law and practice was filed, to wit:

In the Circuit Court for Cecil County.

THE GROVER & BAKER SEWING MACHINE COMPANY
vs.
RADCLIFT, Garnishee of Benge.

It is agreed that at the trial of the above case the common law of Pennsylvania, the practice of her courts, and the construction placed by her courts upon any statutes in force in that State may

be proved by the decision of the Pennsylvania courts as reported in the printed volume of Pennsylvania Reports.

J. T. McCULLOUGH,
Att'y for Garnishee.
ALBERT CONSTABLE,
Plaintiff's Attorney.

It was admitted that the lands described in the deed above mentioned are the same lands that were levied upon by the sheriff in this case, and that William P. Radcliffe, garnishee, was at the time said levy was made in possession of one of said tracts and Ellen Barber of the other.

Plaintiff then proved its act of incorporation.

The garnishee then offered in evidence and read to the jury the following deeds and mortgages:

A deed from John Benge to Thomas W. Strayhorn, dated the 26th day of June, 1874, reciting as follows:

Whereas the said John Benge is seized and possessed of certain messuages, tenements, and tracts or parcels of land hereinafter mentioned and described; and whereas the said John Benge, in consideration of the sum of four thousand dollars at sundry times heretofore received from his wife, Mary A. Benge, the same being money and the proceeds of the sale of property belonging to her in her own right, is desirous of securing the same to his said wife:

Now this indenture witnesseth, &c., conveying in fee simple to said Strayhorn, for the use and benefit of Mary A. Benge, with power to convey the same to her directly, all those two tracts
14 of land mentioned and described in the deeds from Baldwin and wife and Edie and wife respectively.

A deed from Thomas W. Strayhorn to Mary A. Benge, dated the 30th day of June, 1874, the consideration being $5.00, conveying in fee simple the tracts of land conveyed to said Strayhorn by John Benge by his deed before recited.

A deed from John Benge and Mary A. Benge, his wife, to Ellen Barber, wife of John Barber, said Ellen being the daughter of said John Benge and Mary A. Benge, dated the 5th day of July, 1881, the consideration being natural love and affection and $5.00, conveying 36 acres 2 roods and 10 square perches, more or less, being part of the same land conveyed to said Mary A. Benge by Thomas W. Strayhorn.

A deed from John Benge and Mary A. Benge, his wife, to Ann M. Radcliff, wife of William Radcliff, dated the 1st day of September, 1881, the consideration being $5,000.00 and the assumption of a mortgage for the sum of $800.00, conveying 100 acres, more or less, being part of the land conveyed to said Mary A. Benge by Thomas W. Strayhorn.

It was admitted that the land mentioned and described in the deeds offered in evidence by the defendant was the same land described in the deed offered in evidence by the plaintiff and attached by the sheriff in this case.

Garnishee then proved by John Benge, one of the defendants,

that he is the father of the other defendant, James Benge; that he and his said son executed and delivered to the plaintiff the bond recited in the record, offered in evidence by the plaintiff; that he was surety for his said son; that at the time the said bond was executed he, the witness, was a citizen of Maryland, and has never been a citizen of Pennsylvania; that he knew nothing of the plaintiff having sued him in the Pennsylvania court or obtaining judgment therein till a portion of his land, which lay in Pennsylvania, was sold by the plaintiff in 1875, which he supposed was on account of some proceedings on said bond; that he was never summoned in said suit by the plaintiff. Said witness then testified that he was born in Sussex, England, about 80 years ago, and came to this country with his wife, Mary A. Benge, in 1840; that he kept store in England, and at the time he married his said wife a relation of hers gave her a hundred pounds (£100), which he took into his possession; that when he came to America he settled in Cecil county, Maryland, where he has resided ever since until 1874, when he removed to Delaware; that after he came here his wife received money from her relations in England, which was sent to her by draft, drawn by London bankers in her favour on Philadelphia bankers; that his wife gave him orders upon which he received the money from the Philadelphia bankers; that this money in the aggregate amounted to some $4,000.00, and was received principally from about 1848 to 1850; that the money came either from said relations in their lifetime or from their estates after they were dead; that she received a hundred pounds (£100) about ten years ago, and that all the residue except fifty pounds (£50) was received prior to 1852; that as to said last-mentioned fifty pounds (£50) he cannot tell when it was received; that it came from the estate of an aunt, who was the wife of an uncle of witness' wife, who had died about 1851; that it was sent to his wife when said aunt's estate was settled up, but witness cannot tell when said aunt died or when her estate was settled up; that to attempt to fix either date would be upon his part mere guess-work.

15 This witness also testified that in conversation with his wife when the subject of her money was discussed he always told her that she should be secured, but that he could not say that he ever told her this at any time when he received her money; that the conversation had reference to the money which he had already received prior to the date of the conversations.

The garnishee further proved by Mrs. Simmons, a daughter of the defendant, John Benge, that the aunt from whose estate her mother received the fifty pounds (£50), the date of the receipt of which her father could not fix, died in 1857, and she thought the money was received about 1860.

This witness further said that she had a conversation with her mother, the said Mary A. Benge, in the presence of her father, John Benge, in which her mother said to her, "My dear girl, if you ever get married keep your own money."

This witness also said, in the conversation above given, which was in the presence of her father; her mother said also, I am secure;

I have a paper—but witness did not know its contents; and witness also said paper was destroyed when deed was made to her mother.

Plaintiff, upon all the evidence, offered the following prayers:

1st. If the jury find that the plaintiff recovered judgment for $3,000.00, on the 3d of January, 1874, against the defendants, John Benge and James Benge, as shown by the record offered in evidence in this case, and that at said date the said John Benge was the owner of the tract of land mentioned in the deed from John Benge and Mary A. Benge to Ellen Barber, dated the 5th of July, 1881, and that said land was levied upon by the sheriff under the attachment in this case, that then said deed from John Benge and Mary A. Benge to Ellen Barber was *prima facie* fraudulent against the plaintiff in this case.

2nd. If the jury believe the facts stated in plaintiff's first prayer, that then the plaintiff is entitled to a verdict upon the issue joined upon the replication to the fourth plea, unless the jury shall believe that the grantee in said deed was a *bona fide* purchaser of said land for a valuable consideration.

3rd. There is no evidence in this case legally sufficient to prove that the deed from John Benge and Mary A. Benge, his wife, to Ellen Barber was made *bona fide* and for a valuable consideration.

4th. There is no evidence in this case legally sufficient to prove that the deed from John Benge to Thomas W. Strahorn, dated the 26th of June, 1874, or the deed from Thomas W. Strahorn to Mary A. Benge, dated the 30th day of June, 1874, were either of them made *bona fide* and for a valuable consideration; and both of said deeds are *prima facie* fraudulent against creditors existing at the time said deeds were made.

5th. If the jury find the defendants were, on the 3rd of January, 1874, indebted to the plaintiff on judgment for $3,000.00, and that at said date the defendant, John Benge, was the owner of the property levied upon in this case; and further find that upon the 26th day of June, 1874, the said John Benge conveyed the said property to Thomas W. Strahorn, and that the said Strahorn, on the 30th of June, 1874, conveyed the said property to Mary A. Benge, and that upon the 5th of July, 1881, the said John Benge and Mary A. Benge conveyed a portion of said property to Ellen Barber, all of which deeds were offered in evidence by the
16 garnishee, and that the same has been levied upon by the sheriff under the attachment in this case, that then all of said deeds are *prima facie* fraudulent against the plaintiff, in this suit, and the verdict of the jury should be for the plaintiff upon the issue joined upon the replication to the fourth plea, unless the jury find that Ellen Barber, the grantee in the deed from John Benge and Mary A. Benge, or some one under whom the said Ellen claimes by deed subsequent to said judgment, was a *bona fide* purchaser for a valuable consideration of the land conveyed to her by said deed; and their is no legally sufficient evidence to prove that she or any one under whom she claims was such a purchaser.

6th. If the jury find that the defendants executed and delivered to the plaintiff the bond recited in the record of the Pennsylvania

court, offered in evidence; and also find the Pennsylvania statute of 1806, also offered in evidence by the plaintiff; and also find that the judgment recited in the said Pennsylvania record were entered as therein stated, that then said judgment is a valid judgment.

7th. If the jury find the defendants executed and delivered to the plaintiff their bond for three thousand dollars, payable on demand, said bond containing a warrant of attorney of any court of record of the State of New York or any other State to confess judgment against the defendants and in favor of the plaintiff for the sum of three thousand dollars, with a release of errors, and that said judgment was entered in the court of common pleas in and for the county of Chester, in the Commonwealth of Pennsylvania, one of the United States of America, and that at the time said judgment was entered the said court was a superior court of record and of general jurisdiction, and that by the law of the said State of Pennsylvania and the practice of her courts the said judgment in the declaration or short note mentioned was recorded as therein alleged, then the verdict under the pleadings in this case should be for the plaintiff upon the issues raised by plaintiff's surrejoinder to defendant's rejoinder to the 2nd replication to the 2nd and 6th pleas.

8th. There is no evidence in this case legally sufficient to prove the defences set up by the 2nd plea.

9th. If the jury find the statute of Pennsylvania of 1806, offered in evidence by plaintiff, and also the bond offered in evidence, a copy of which is contained in the record offered in evidence by the plaintiff, then their verdict, under the pleadings in the case, should be for the plaintiff upon the issue joined upon the plaintiff's surrejoinder to defendant's rejoinder to 2nd replication to 2nd and 6th pleas.

10th. If the jury find the facts stated in the preceding prayer, their verdict, under the pleadings in the case, should be for the plaintiffs upon the issue joined on plaintiff's 1st replication to defendant's 2nd plea.

And the defendant also offered a number of prayers.

The court rejected and refused to grant the plaintiff's prayers and each of them, and also rejected all of the defendant's prayers, but granted an instruction of its own, which is as follows:

The court instructs the jury that the statute law of the State of Pennsylvania, offered in evidence by the plaintiff and admitted by the defendant to be the law under which the judgment offered in evidence by the plaintiff was entered, did not authorize
17 the prothonotary of the court of common pleas in and for the county of Chester, in the State of Pennsylvania, to enter the said judgment, and their verdict should be for the defendant.

To the rejection of its prayers and each of them by the court, and also to the court's instruction given to the jury, the plaintiff excepted and prayed the court to seal and sign t-is its bill of exceptions, which is done accordingly this fifteenth day of February, 1886.

FREDERICK STUMP. [SEAL.]

Test: JAMES A. DAVIS, *Clerk.*

STATE OF MARYLAND, *Cecil County*, } *sct:*

I hereby certify that the aforegoing is a true transcript of the record of proceedings in the therein-entitled case.

In testimony whereof I hereto set my hand and (Seal's place.) affix the seal of said circuit court this 22d day of September, A. D. 1886.

JAMES A. DAVIS,
Clerk of the Circuit Court for Cecil County.

STATE OF MARYLAND, *Cecil County*, } *sct:*

On this 22d day of September, 1886, before the subscriber, a justice of the peace of the State of Maryland in and for Cecil county, appeared James A. Davis, clerk of the circuit court for Cecil county, and made oath in due form of law that the delay in the transmission of the transcript of record in the case of The Grover & Baker Sewing Machine Co. *vs.* Benge was occasioned by his overlooking the fact that an appeal had been prayed in said case and his attention to the matter recalled to it but recently.

ANDREW J. SCOTT, *J. P.*

STATE OF MARYLAND, *Cecil County*, } *sct:*

I hereby certify that Andrew J. Scott, Esquire, before whom the annexed affidavit was made and who has thereto subscribed his name, was at the time of so doing a justice of the peace of the State of Maryland in and for Cecil county, duly commissioned and sworn and authorized to take the same, and that his signature thereto is genuine.

In testimony whereof I hereto set my hand and (Seal's place.) affix the seal of the circuit court for Cecil county this 22d day of September, A. D. 1886.

JAMES A. DAVIS,
Clerk of the Circuit Court for Cecil County.

18 Court of Appeals of Maryland. January Term, 1887.

THE GROVER AND BAKER SEWING MACHINE COMPANY *vs.* WILLIAM P. RADCLIFFE, Garnishee of John Benge. } No. 29.

Judge Miller delivered the opinion of the court:

When this case was here on the former appeal (63 Md., 496) no question was presented as to the nature or effect of the judgment on which the attachment was issued. In the present case the validity of that judgment is assailed and the question is raised
19 by the second and sixth pleas filed by the garnishee in behalf of the defendants in the attachment. The plea of *nul*

tiel record was decided by the court in favor of the plaintiff, and upon the other issues the trial was before a jury. A single exception was taken, which involves the ruling of the court upon the prayers or propositions of law.

The plaintiff offered in evidence a duly certified copy of the judgment in question, from which it appears that the judgment was entered by the prothonotary of the court of common pleas for Chester county, Pennsylvania, and the entry was made on the judgment docket of that court on the 3rd of January, 1874. The titling of the case on the docket is "Grover & Baker Sewing Machine Company, Boston, Mass., and Philadelphia, *vs.* James Benge, West Chester;
John Benge, Kimbleville, Md.," which is followed by this
20 entry, signed by the prothonotary: "I do hereby enter judgment against the defendants and in favor of the plaintiff in this cause for the sum of $3,000, lawful money, debt, besides costs, &c., on a bond and warrant of attorney to confess judgment, dated March 16th, 1872," and then follows as part of the entry the condition of the bond. The bond itself is then set out in full and forms part of the record of the judgment. On its face one of the obligors (James Benge) is stated to be a resident "of West Chester, Pa.," and the other (John Benge) of Kimbleville, Cecil county, Md." The obligatory or penal part is in the usual form for "the sum of $3,000, lawful money," but is followed by this stipulation: "And we (the obligors) hereby authorize any attorney of any court of record in the State of New York or any other State to confess judgment against us for the said sum, with release of errors, &c."

21 The condition is as follows: "Whereas the above-named James Benge, at the special instance and request of the above-bound John Benge, has obtained a credit with the said Grover & Baker Sewing Machine Company for machines of their manufacture and for sewing-machine findings, silks, and threads manufactured and dealt in by said Grover & Baker Sewing Machine Company, and for other articles, including promissory notes and other property to be hereafter supplied to him, the said James Benge:

"Now, the condition of the above obligation is such that if the above-bound James Benge, his heirs, executors, or administrators, shall well and truly pay or cause to be paid to the said Grover & Baker Sewing Machine Company the full amount of each and every liability incurred by him, the said James Benge, to or with the said
Grover & Baker Sewing Machine Company for and on account
22 of all sewing-machines and all sewing-machine findings, silks, and threads or other articles, including promissory notes and other property that may from time to time hereafter be sold, consigned, supplied, or otherwise entrusted to him, the said James Benge, by the said Grover & Baker Sewing Machine Company upon his orders or by his acceptance, with or or without notice to the said John Benge at the time or times when each and every liability shall become due and payable or at such time and times for which payment of the same may hereafter, with or without notice to the said John Benge, be extended, then this obligation to be void. This

obligation is intended to operate as a continuing security for the payment, when the same shall become due and be demanded, of all and every liability incurred to and with the said Grover & Baker Sewing Machine Company by the said James Benge as aforesaid to the amount not exceeding the limit of this bond—$3,000."

23 The Pennsylvania record also shows that a *fi. fa.* was issued on this judgment in August, 1875, which was levied upon about thirty acres of land in Chester county, "late the estate of John Benge, one of the defendants." This land was afterwards, under a *vendi* issued in December, 1875, sold by the sheriff to The Grover & Baker Sewing Machine Company, the plaintiff in the judgment, for $65, and the net proceeds of the sale amounted to $8.20 only.

The plaintiff then offered in evidence a statute of Pennsylvania passed in 1806, under which it claimed the prothonotory had authority to enter the judgment. The statute provides that "It shall be the duty of the prothonotory of any court of record within this Commonwealth, on the application of any person being the original holder (or assignee of such holder) of a note, bond, or other instrument of writing in which judgment is confessed or containing

24 a warrant for an attorney-at-law or other person to confess judgment, to enter judgment against the person or persons who executed the same for the amount which from the face of the instrument may appear to be due, without the agency of an attorney or declaration filed, with such stay of execution as may be therein mentioned, for the fee of one dollar, to be paid by the defendant, particularly entering on his docket the date and tenor of the instrument of writing on which the judgment may be founded, which shall have the same force and effect as if a declaration had been filed and judgment confessed by an attorney or judgment obtained in open court and in term time, and the defendant shall not be compelled to pay any costs or fee to the plaintiff's attorney when judgment is entered on any instrument of writing as aforesaid."

25 It was then agreed that the common law of Pennsylvania, the practice of the courts in and the construction of the statutes of that State might be proved by the decisions reported in the printed volumes of the Pennsylvania reports. The court below thereupon instructed the jury to find for the defendant upon the ground that this act of 1806 did not authorize the prothonotory to enter this judgment.

The case upon which, as we understand from the briefs of counsel, the court mainly relied in granting this instruction is that of Conway *vs.* Halstead, 73 Penn. State Rep., 354. In that case it was held that this act of 1806 does not give the prothonotory all the powers of an attorney-at-law to confess judgment, and that he can enter such judgment only when on the instrument the amount due appears or can be rendered certain by calculation from its face.

The act of the prothonotory under this statute, says the court,

26 "must be strictly according to the law, and is not like the general authority of an attorney-at-law who may appear and confess judgment and arrange the details of the judgment," and we are strongly inclined to the opinion that the Pennsylvania courts

would hold, in a case between citizens of that State, that the present case does not come within the purview of that statute. It is true the bond or obligation in the case referred to is not the same as in this, and that here the authority to the attorney is to confess judgment for the $3,000, the penalty of the bond, but the amount actually due is not expressed and cannot be ascertained by calculation from anything appearing on the face of the instrument, if any reference whatever is had to its condition. It would, as it appears to us, be an anomoly in legislation to provide that a mere clerk of a court could enter a judgment on a bond with collateral
27 condition like this, which should definitely and conclusively determine that the sum named as the penalty was the debt actually due by the obligors, without any assignment of breaches or suggestion on the roll or inquiry by inquisition of a jury or otherwise as to whether the condition had been violated or not; and, if so, to what extent, and to allow (as was done in this case) a *fi. fa.* to be issued, commanding the sheriff to make out of the property of the obligors the full sum of $3,000 as "a certain debt," whereof the obligors "are convict." But however this may be, and without stopping to inquire how a judgment on such a bond, so as to be effective for execution, can be rendered, there is, we think, a fundamental and fatal objection to the validity of this judgment as against the defendant, John Benge. He was a citizen and resident of Maryland both when the bond was executed and when the judgment was en-
28 tered, and it is land alleged to be his located in Maryland which is sought by this attachment to be condemned for the satisfaction of this judgment. He was never served with process, never appeared in person or by attorney, and never had any notice or knowledge of the judgment until a part of his land which lay in Pennsylvania was sold under the writs of *fi. fa.* and *vendi.* in 1875. By the terms of his bond he authorized "any attorney of any court of record in the State of New York or any other State to confess judgment against him for the said sum of $3,000," and he has the right to require that a judgment rendered against him in the court of another State shall be rendered in strict conformity of this authority. He did not authorize or consent that a judgment should be entered against him by the prothonotory or clerk under a special law to that effect
29 of any State, and when such a judgment is produced against him his answer to it *in hæc federa non veni* is complete and conclusive. The question then comes to this: Is a judgment *in personam* upon an obligation for the payment of money rendered by a court and under the laws of one State valid as against a citizen of another State who had never been served with process, had never appeared to the suit in person or by attorney, nor had any other knowledge or notice of it, and can such a judgment be enforced against the property of such a defendant located in the State of his residence? We think it is now clearly settled that such a judgment is entirely void, because the court rendering it had acquired no jurisdiction over the person of the defendant, and that this objection to it may be set up either in a case where an action is brought upon

the judgment itself or where, as here, it is made the foundation
30 of an attachment against the property of the defendant situated in the State of his residence. 38 Md., 255, Weaver *vs.* Boggs; 95 U. S., 714, Pennager *vs.* Neff; 7 Gill, 429, Bank of the United States *vs.* Merchants' Bank of Baltimore; 18 Wallace, 457, Thompson *vs.* Whitman.

Such being our views of the case, it is clear the appellant has suffered no injury by the instruction to the jury to find a verdict for the defendant, even though the court may have assigned a wrong reason therefor.

We shall affirm the judgment without considering the motion to dismiss the appeal.

Judgment Affirmed.

Judgment was affirmed in this case on the 28th day of January, 1887, and execution awarded for the sum of $14.20 costs in the circuit court for Cecil county and $29.50 costs in the court of appeals of Maryland.

31 To the Honorable Richard H. Alvey, chief judge of the court of appeals of Maryland:

The petition of Grover and Baker Sewing Machine Company respectfully represents—

That a final judgment has been rendered by the court of appeals of Maryland in a suit therein pending, wherein Grover and Baker Sewing Machine Company is plaintiff of record and William P. Radcliffe is defendant of record; that the court of appeals aforesaid is the highest court of law in the State of Maryland in which a decision in said suit could be had; that in said suit a right and privilege are claimed under the Constitution and statutes of the United States, and the decision is against the right and privilege set
32 up and claimed by your petitioner under such Constitution and statutes, all of which appears upon the face of the record accompanying this petition.

Wherefore, to the end that the said judgment may be re-examined and reversed in the Supreme Court of the United States upon a writ of error, your petitioner prays that a writ and that a citation may issue in the same manner as if the said judgment had been rendered in a circuit court of the United States.

WILLIAM T. WARBURTON,
ALBERT CONSTABLE,
Counsel for Grover and Baker Sewing Machine Company.

The above petition is granted, and a writ of error is allowed as therein prayed.

R. H. ALVEY,
33 *Chief Judge of the Court of Appeals of Maryland.*

UNITED STATES OF AMERICA, *To wit:*

The President of the United States to the honorable the judges of the court of appeals of Maryland, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment of a plea which is in the said court of appeals, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Grover and Baker Sewing Machine Company, appellant, and William P. Radcliffe, appellee, wherein was in question the construction of a clause of the Constitution or statute of the United
34 States, and the decision was against the right or privilege set up or claimed und- the said clause of the Constitution or statute, a manifest error has happened, to the great damage of the said Grover and Baker Sewing Machine Company, as by its complaint appears, we, being willing that the error, if any there has been, should be duly corrected : nd full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to cor-
35 rect that error what of right and according to the law and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 16th day of March, in the year of our Lord one thousand eight hundred and eighty-seven.

[The Seal of the Circuit Court, Maryland.]

JAMES W. CHEW,
Cl'k Circuit Court U. S., District of Maryland.

Know all men by these presents that we, Job Haines and John E. Wilson, both of United States and district of Maryland, are held and firmly bound unto William P. Radcliffe in the just and full sum of three hundred dollars, lawful money, to be paid to the said William P. Radcliffe, his heirs, executors, administrators, and assigns; to the payment whereof, well and truly to be made
36 and done, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 5th day of March, in the year of our Lord one thousand eight hundred and eighty-seven.

Whereas in a cause in the circuit court for Cecil county, in the State of Maryland, at the December term thereof, in the year of our Lord one thousand eight hundred and eighty-five, Grover and Baker Sewing Machine Company was plaintiff and William P. Radcliffe was defendant, the judgment of the said circuit court was for the said William P. Radcliffe, which said judgment was on appeal taken to the court of appeals of the State of Maryland and affirmed by

said last-mentioned court at its January term, in the year one thousand eight hundred and eighty-seven; and whereas the said
37 Grover and Baker Sewing Machine Company has sued out a writ of error, directed to said court of appeals of Maryland and returnable to the next term of the Supreme Court of the United States after the date of these presents:

Now, the condition of the above obligation is such that if the said plaintiff shall not cause a transcript of the record and the proceedings of the said court of appeals of Maryland to be transmitted to the said Supreme Court within the time appointed by law and prosecute the said writ of error with effect, and also satisfy and pay to the said William P. Radcliffe, his heirs, executors, administrators, and assigns, in case the said judgment shall be affirmed, the costs adjudged in the court of appeals aforesaid, as also the costs that may be awarded in the said Supreme Court, then the
38 above obligation to be void and remain in full force and virtue; otherwise of no effect.

JOB HAINES. [SEAL.]
JOHN E. WILSON. [SEAL.]

Signed, sealed, and delivered in the presence of—
JNO. D. HAINES.

I hereby certify that I consider the above bond good and sufficient; that the same would be approved by me if offered for that purpose.

JAMES A. DAVIS,
Clerk of the Circuit Court for Cecil County.

Approved this 18th day of May, 1887.

R. H. ALVEY,
Ch. Judge, &c.

The United States of America to William P. Radcliffe, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of
39 error filed in the clerk's office of the court of appeals of Maryland, wherein Grover and Baker Sewing Machine Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard H. Alvey, chief judge of the court of appeals of Maryland, this 16th day of March, in the year of our Lord one thousand eight hundred and eighty-seven.

R. H. ALVEY,
Chief Judge of the Court of Appeals of Maryland.

Service of the foregoing admitted this 7th day of April, A. D. 1887.

40 J. T. McCULLOUGH,
Att'y for Wm. P. Radcliffe, Garnishee.

In the Court of Appeals of Maryland. January Term, 1887.

GROVER AND BAKER SEWING MACHINE COMPANY
vs.
WILLIAM P. RADCLIFFE, Garnishee of James Benge and John Benge.

41 The plaintiff assigns for error the judgment of said court of appeals in affirming the ruling of the circuit court for Cecil county, by which said last-mentioned court instructed the jury as follows:

"The court instructs the jury that the statute law of the State of Pennsylvania offered in evidence by the plaintiff and admitted by the defendant to be the law under which the judgment offered in evidence by the plaintiff was entered did not authorize the prothonotary of the court of common pleas in and for the county of Chester, in the State of Pennsylvania, to enter the said judgment, and their verdict should be for the defendant."

WILLIAM T. WARBURTON,
ALBERT CONSTABLE,
Plaintiff's Attorneys.

42 The plaintiff prays for a reversal of the judgment of the court of appeals of Maryland in the above-entitled cause for manifest errors in the record of said cause appearing.

WILLIAM T. WARBURTON,
ALBERT CONSTABLE,
Plaintiff's Attorneys.

STATE OF MARYLAND, *City of Annapolis,* } *To wit:*

I, Spencer C. Jones, clerk of the court of appeals of Maryland, at Annapolis, in obedience to the mandate of a writ of error awarded by the Honorable Richard H. Alvey, chief judge of the court of appeals of Maryland, bearing date the 16th day of March, 1887, do hereby certify that the foregoing record is a true transcript of the record and proceedings in the case of Grover and Baker Sewing Machine Company *vs.* William P. Radcliffe as the same remains on file in the clerk's office of the said court of appeals.

43 And I do further certify that the said court of appeals is the highest court of law or equity in said State in which a decision can be had in said case.

And I further certify that the foregoing bond in said record is a true copy of the bond in *in* said case which was filed in my office on the 10th day of April, 1887.

And I do further certify that the foregoing writ of error in said

record is a true copy of said writ awarded by the said the Honorable Richard H. Alvey, chief judge as aforesaid, to the judgment of said court, and I herewith transmit the original of said writ; and I do further certify that a copy of said writ was duly filed in my office for the State of Maryland on the 10th day of April, 1887.

And I do further certify that the copy of the opinion of the court of appeals in said record is a true copy of the same as rendered by said court in said case and on file in my office, and that said
44 judgment in said court of appeals in said case was rendered on the 28th day of January, 1887.

In testimony whereof I have hereunto subscribed my name as clerk of the said court of appeals of Maryland, and affixed the official seal of said court, at my office, in Annapolis, Maryland, on the eighteenth day of May, A. D. 1887.

Seal Court of Appeals, Maryland.

SPENCER C. JONES,
Clerk Court of Appeals of Maryland.

Cost of transcript, $10.

Endorsed on cover: Maryland court of appeals. No. 365. The Grover and Baker Sewing Machine Company, plaintiff in error, *vs.* William P. Radcliffe. Filed August 5, 1887.

Office Supreme Court, U. S.
FILED,
SEP. 26 1890
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

October Term, 1890. No.

The Grover & Baker Sewing Machine Company,

Plaintiff-in-Error,

vs.

William P. Radcliffe.

Brief for Plaintiff-in-Error.

Albert Constable,
William T. Warburton,
for Plaintiff-in-Error.

M80

Supreme Court of the United States.

October Term, 1890. No. .

The Grover & Baker Sewing Machine Company,

Plaintiff-in-Error,

vs.

William P. Radcliffe.

Brief for Plaintiff-in-Error.

I. Statement.

This is a Writ-of-Error to the Maryland Court of Appeals.

The case was a foreign attachment issued out of the Circuit Court for Cecil County, Maryland, by the plaintiff-in-error, upon a judgment for $3,000, which it had recovered against the defendants in the attachment, James Benge and

John Benge, in the Court of Common Pleas in and for Chester County, in the State of Pennsylvania. At the date of the attachment the Benges were citizens of Delaware, and the writ was levied upon a certain tract of land in possession of William P. Radcliffe, the defendant-in-error, who was made garnishee. The defendants in the attachment, the Benges, did not appear to the suit, but Radcliffe, who claimed title under an alleged sale from John Benge, appeared as garnishee, and filed pleas on behalf of the Benges, according to the Maryland practice.

The principal defence, and the one upon which the case was decided, both in the County Court and in the Court of Appeals, was the alleged invalidity of the judgment which the plaintiff-in-error had obtained against the Benges in the Pennsylvania Court, and upon which these attachment proceedings in the Maryland Court were based.

The history of that judgment is as follows: On the 16th of March, 1872, James Benge, a citizen of Pennsylvania, and John Benge, a citizen of Maryland, executed and delivered to the plaintiff-in-error, The Grover & Baker Sewing Machine Company, a bond for $3,000, containing a power to "any attorney of any Court of Record in the State of New York, or any other State, to confess judgment against us for the said sum with a release of errors," etc. (See the bond on pages 6 and 7 printed Record.)

Upon this bond and warrant of attorney the Prothonotary of the Common Pleas for Chester County, Pennsylvania, on the third of January, 1874, entered the judgment which is the foundation of the attachment. (See the judgment, printed Record, page 6.)

In entering the judgment, the prothonotary acted under a statute of Pennsylvania passed in 1806, which is as follows: "It shall be the duty of the prothonotary of any court of record within this commonwealth, on the application of any person being the original holder (or assignee of such holder) of a note, bond, or other instrument of writing in which judgment is confessed or containing a warrant for an attorney at law or other person to confess judgment, to enter judgment against the person or persons who executed the same for the amount which from the face of the instrument may appear to be due, without the agency of an attorney or declaration filed, with such stay of execution as may be therein mentioned, for the fee of one dollar, to be paid by the defendant, particularly entering on his docket the date and tenor of the instrument of writing on which the judgment may be founded, which shall have the same force and effect as if a declaration had been filed and judgment confessed by an attorney, or judgment obtained in open court and in term time, and the defendant shall not be compelled to pay any costs or fee to the plaintiff's attorney when judgment is entered on any instrument of writing as aforesaid." (See the statute, page 12, printed Record.)

At the trial of the case, the Circuit Court for Cecil County (page 16 of printed Record) instructed the jury as follows: "The Court instructs the jury that the statute law of the State of Pennsylvania, offered in evidence by the plaintiff, and admitted by the defendant to be the law under which the judgment offered in evidence by the plaintiff was entered, did not authorize the prothonotary of the Court of Common Pleas in and for the County of Chester, State of Pennsylvania, to enter said judgment, and the verdict should be for the defendant."

The plaintiff-in-error excepted to this instruction, and appealed to the Court of Appeals which affirmed the judgment of the County Court. The present writ of error was then sued out.

The theory on which the instruction was given by the County Court was, that the bond given by the Benges was not such an instrument as the statute of 1806 contemplated, in that no amount appeared "from the face of the instrument" to be due.

The Court of Appeals affirmed the judgment, not upon the ground taken by the County Court, but upon the ground that John Benge, one of the obligors who signed the bond of warrant of attorney, was a citizen of Maryland, and, as he was not served with process, and did not voluntarily appear, the Pennsylvania statute of 1806, which authorized the prothonotary to enter the judgment, was invalid as to him—that the statute though valid as to a citizen of Pennsylvania was invalid as to a citizen of Maryland.

II. Assignment of Error.

The Court of Appeals erred in affirming the instruction given by the Circuit Court for Cecil County to the jury, to wit:

"The court instructs the jury that the statute law of the State of Pennsylvania offered in evidence by the plaintiff, and admitted by the defendant to be the law under which the judgment offered in evidence by the plaintiff was entered, did not authorize the prothonotary of the Court of Common Pleas, in and for the County of Chester, in the State of Pennsylvania, to enter the said judgment."

III. Brief of Argument.

I. As the above instruction was given to the jury by the County Court upon one theory, and affirmed by the Court of Appeals upon another and different theory, let us first turn to the grounds advanced by the Court of Appeals for its affirmance.

Conceding that the judgment here assailed as invalid against John Benge, would be valid had he been, at the time it was entered, a citizen of Pennsylvania, that Court holds that, being *then* a citizen of Maryland, it is invalid. Why? If, as a judgment *in personam* against John Benge, being at the time it was entered a citizen of Maryland, it was invalid, because, in the absence of process served, voluntary appearance, or an effectual waiver of process by him, there was no jurisdiction over the party, it would be equally invalid had Benge been, at the time it was entered, a citizen of Pennsylvania. On the other hand, if, at the time this judgment was entered, there existed those conditions, as to notice, essential to jurisdiction over the party, this judgment would be valid, without regard to Benge's state residence or citizenship at the time it was entered. Judgments *in personam*, assailed for want of jurisdiction over the party, stand or fall, not according to the party's residence or non-residence within the jurisdiction, but by the presence or absence of those conditions, as to notice, which are everywhere respected as necessary to a legitimate exercise of judicial power. This is clearly pointed out by Mr. Justice FIELD in delivering the judgment of this Court in *Pennoyer* vs. *Neff*, 95 *United States*, at p. 732. He says: "In several of the cases, the decision has been accompanied with the observation that a personal judgment thus rendered has no binding

force without the State in which it is rendered, implying that in such State it may be valid and binding; but if the Court has no jurisdiction over the person of the defendant by reason of his non-residence, and, consequently, no authority to pass upon his personal rights and obligations; if the whole proceeding, *without service upon him or his appearance*, is *coram non judice* and void; if to hold a defendant bound by such a judgment is contrary to the first principles of justice—it is difficult to see how the judgment can legitimately have any force *within* the State. * * * In later cases, this language is repeated with less frequency than formerly, it beginning to be considered, as it always ought to have been, that a judgment which can be treated in any State of this Union as contrary to the first principles of justice, and as an absolute nullity, because rendered without any jurisdiction of the tribunal over the party, is not entitled to any respect in the State where rendered."

The question to be considered here is, therefore, much broader than is stated by the Court of Appeals. If this judgment is a nullity as to John Benge, then every judgment in Pennsylvania, entered by a prothonotary under the statute of 1806, is a nullity, and every title, acquired by a sale under such a judgment, is invalid. As the statute has been practiced under since 1806, many titles necessarily depend upon its validity.

The Court of Appeals seemed to think that a judgment entered as the judgment here was, would be valid if entered against a citizen of Pennsylvania. Why? It certainly would be invalid if there was no jurisdiction in the court, *even as to him*. That a statute of the State authorized it, would not help

the matter, except upon grounds which would equally make the judgment binding upon a non-resident.

Would, then, a judgment so entered be binding upon a citizen of Pennsylvania, and if so, why?

(*a*) Looking at the substance of things, not names, a judgment when confessed by an attorney on a warrant which specified, *on its face*, the amount, terms, etc., of the proposed judgment, was never really confessed by the attorney, but by the defendant himself. The *warrant on its face*, in such cases, which are the only cases dealt with by the statute, is a full consent by the defendant to the judgment therein and thereby authorized. It is not a principle of law, but a rule of practice merely which requires in such cases, that is, cases where the warrant of attorney, upon its face, has specified the amount, terms, etc., of the confessed judgment, that between the defendant who gives the warrant, and the prothonotary who makes the actual entry of judgment, there shall be interposed the agency of an attorney; and it is only this rule of practice in entering the formal judgment that the statute of 1806 deals with. This is mere *procedure*.

Helvete vs. *Rapp*, 7 S. & R. 306, (*Pa.*)

It is apparent, therefore, that the statute of 1806 is a mere practice act, involving no question of the power of the Court over the party; that it deals with a mere question of procedure, not jurisdiction; and that, if in entering any judgment irregularity has supervened, it is to be corrected by an application to the Court upon whose records the judgment stands, and which, in contemplation of law, has rendered it, or by an appeal or writ of error to the Supreme Court of Pennsylvania.

If erroneous it is an error of procedure, not jurisdiction, and is not open to collateral attack.

In *Braddee* vs. *Brownfield*, *4 Watts*, *474* (*Pa.*), Chief Justice GIBSON said: "In contemplation of law, a judgment on warrant of attorney is as much an *act of the Court* as if it were formally pronounced on *nil dicit*, or a *cognovit*, and until it is *reversed* or *set aside* it has all the qualities and effect of a judgment on verdict." And in *Hageman* vs. *Salisberry*, *74 Pa. St.*, at page 284, the Court repeated this language, and added: "The judgment of a prothonotary, under a power contained in the instrument, is a *judicial act*, and may be entered by him under the Aet of 1806, or may be confessed by an attorney independently of that Act."

The Court of Appeals in disposing of the Prothonotary's power under the statute to enter judgment on the warrant of attorney given by the Benges, treats the question as if it was to be determined by an application of the principles governing agents in the execution of special powers, and, apparently, loses sight of the real question to be determined here, which is one depending upon different principles. The act here questioned is the act of the Prothonotary of the Court of Common Pleas, and one which, under the laws of Pennsylvania, is a *judicial act*. *Hageman* vs. *Salisbury*, *74 Pa. St.*, page 284. And being a *judicial* act it must be tested by the application of the same principles which guide us in testing the jurisdiction of any other judicial officer or Court. In entering a judgment under authority given him by the Statute of 1806, the prothonotary is not a mere *agent of the party* giving the warrant, but is a public officer, *clothed by the laws* of Pennsylvania with power to perform a judicial act—to enter a judgment.

What, then, are those principles? One of them is, that the Court must have jurisdiction over the party against whom the judgment is to be entered. This may be acquired by service of process upon him within the jurisdiction, or by his voluntary appearance without process. It may, of course, be equally acquired by his waiver of process. The principle is, that the party shall have notice and an opportunity to be heard; but he waives this when he executes and delivers to his creditor an instrument on which, by the established practice of the Courts, a judgment may be entered without notice. In the case at bar, the Benges having given to the plaintiff-in-error an *irrevocable power of attorney*, with authority to take it to any attorney of any Court of record of any State, and have judgment entered up against them for $3,000 without notice to them of the time or place of such entry, the principle which requires that the party shall have notice and an opportunity to be heard has been fully gratified.

Now the principle which demands for a defendant notice of the time and place, and an opportunity to be heard, having been thus irrevocably waived by the Benges in signing the warrant which they delivered to the plaintiff-in-error, jurisdiction to enter this judgment was fully established. Whether it should be entered with the agency of an attorney, as before the Statute of 1806, or without such agency, as allowed by that statute in certain cases, was a mere matter of practice and procedure, and a proper subject for regulation by the Legislature.

In *Rabe* vs. *Heslip*, *4 Barr*, *139*, the Supreme Court of Pennsylvania said: "The Act of Assembly merely substitutes the prothonotary, though not named or described, for an

attorney of the Court; but it *supplies no deficiency of the power given in the first instance.*"

(*b*) But there is another ground upon which this judgment against John Benge can stand, and which, we submit, is equally conclusive.

At the time John Benge gave the warrant to "any attorney of any Court of record of the State of New York, or *any other State*," to confess a judgment against him for $3,000, this Statute of 1806 was an *existing statute* of the State of Pennsylvania, any one of whose Courts of record were thus authorized by Benge to enter the judgment against him. *This statute, therefore, formed part of the warrant,* and must be read into it. In giving the warrant, this Statute of 1806 being at the time an existing statute of the State regulating the manner in which the Courts should enter the judgment on instruments of that description, he *virtually thereby consented* that judgment might be entered according to the practice of the Courts of that State as regulated by this statute. It would be a monstrous claim, that having given a warrant to confess a judgment in the Courts of Pennsylvania, he was now entitled to argue that a judgment entered in one of those Courts in accordance with the law and practice of the State, was void and a nullity, though that law was an existing law of the forum at the time he gave the warrant.

Johnson vs. *Chicago, etc., Elevator Co., 119 U.S. 400.*
Orr vs. *Hopkins, 124 U. S., 510.*

These views of the Statute of 1806, in its relation to this judgment, were apparently not presented to the Court of Appeals. At any rate, it does not deal with them in its opinion, but summarily disposes of that statute by the sweep-

ing remark, that "he did not authorize or consent that a judgment should be entered against him by the prothonotary or clerk under a special law to that effect of any State." This is, to say the least, a most unsatisfactory manner of disposing of the statute which has regulated the practice of a great State for so many years, and under which so many titles are held. Why, in giving the warrant of attorney, he did not "authorize or consent" that the judgment should be entered according to the law and practice of the Courts where it was to be entered, we are not informed.

II. It was agreed at the trial, that the common law of Pennsylvania, the practice of her Courts, and the construction placed by the Courts upon the statutes of the State, might be proved by the decisions as reported in the printed volumes of the Pennsylvania Reports. (See agreement, page 12, printed Record.)

We will, therefore, in the light of those decisions, next proceed to consider the theory on which the County Court acted in giving to the jury the instruction of which we complained, namely, that the bond and warrant given by the Benges to the plaintiff-in-error was not such an instrument as was contemplated by the Statute of 1806, in that—as was assumed by the Court—no amount appeared "from the face of the instrument" to be due.

But first, we will examine, at some length, into the correctness of several general observations made by the Court of Appeals on the nature of this Pennsylvania judgment, and which observations—obviously, as we think, founded in error—give the key to the decisions which have been made in this case both by that Court and by the County Court.

(*a*) In Maryland, bonds accompanied by warrants to confess judgment, and which, in Pennsylvania, are called judgment bonds, are wholly unknown in practice, though in Pennsylvania, by reason of the facility they afford for entering up judgment against a defendant and securing a lien on his property *in advance of any breach of the agreement contained in the condition of the bond*, they have always been favorite securities. And the whole difficulty in this case has apparently arisen from unfamiliarity by the Maryland Courts with the peculiar practice of the Pennsylvania Courts with regard to these judgment bonds, where taken, as here, as continuing securities for the performance of collateral agreements. In consequence the effort of both the Maryland Courts in this case, has visibly been to find some loop-hole through which the Benges might escape from what those Courts seemed to regard as an undue advantage which the plaintiff-in-error had secured by the *form* in which this judgment was entered in the Pennsylvania Court. Thus the Court of Appeals, page 20, printed Record, says: "It would, as it appears to us, be an anomaly in legislation to provide that a mere clerk of a Court could enter a judgment on a bond with collateral condition like this, which should definitely and conclusively determine that the sum named as the penalty was the debt actually due by the obligors, without assignment of breaches, suggestion on the roll, or inquiry by inquisition of a jury, or otherwise as to whether the condition had been violated or not, and if so, to what extent." If the Court means by this, that the fact that this judgment was entered by the prothonotary under the Act of 1806, has produced an anomaly in the judgment which would not have existed in it had it been confessed by an attorney, in open Court and in term time,

independently of that Act, it is respectfully submitted that the Court is in error.

The fact that this judgment was entered by the prothonotary, not in *open Court* and in *term time*, and without the *agency of an attorney*—which is the anomaly complained of—in accordance with the Act of 1806, has not created, or in any way added to, what the Court condemns as an anomaly; for if, not dispensing with the agency of an attorney (as the Act directs may be done), the judgment had been entered *with his agency, in open Court, and in term time* (which the Court admits would have been in strict compliance with the authority of the warrant), we should have had the same anomaly as we have here, because the judgment would still have been in the same terms—the precise form—it now is, and equally, without the saving grace of "an assignment of breaches, or suggestion on the roll, or inquiry by inquisition of a jury."

This is perfectly apparent; because on bonds and warrants to confess judgment, it is *settled practice* in Pennsylvania that no "assignment of breaches, suggestion on the roll, or inquiry by inquisition of a jury is necessary."

Skidmore vs. *Bradford*, 4 *Barr*, 296, (*Pa.*)
Reynolds vs. *Lowry*, 6 *Barr*, 465, (*Pa.*)
Bank of Chester vs. *Ralston*, 7 *Barr*, 482, (*Pa.*)

Entered in either way, therefore—in open Court in term time, with the agency of an attorney, or by a prothonotary, without his agency, under the Act of 1806,—the judgment would be in the *same form*, and have precisely the *same effect*, in the one case as in the other.

At common law, the judgment on bonds with collateral condition was, in all cases, that the plaintiff recover his debt

and costs, that is, *the penalty;* and the execution, following the judgment, was to levy the debt and costs recovered by the judgment. In actions on bonds sued *by writ* the relief was, prior to the 8 and 9 Will. iii, ch. 11, in chancery, to prevent the plaintiff levying anything beyond the real debt. But in judgments entered on warrants of attorney, it was never necessary for a defendant to seek relief in chancery, but he was entitled to it *on motion* to the common law Court where the judgment was entered; the Court exercising an equitable discretion to prevent an abuse of its process. Executions on judgments entered up on warrants of attorney were therefore not within the mischief which the Statute of 8 and 9 Will. iii, was made to remedy; and the settled construction has always been that the statute did not extend to them. Consequently, defendants in this latter class are left as at common law. Their relief is by motion to the common law Court.

The Pennsylvania practice in regard to judgments entered up on warrants of attorney is fully explained by Chief Justice GIBSON in *Skidmore* vs. *Bradford, 4 Barr, 296.* He says: "A judgment on bond and warrant is not within the statute" (that is, 8 and 9 Will. iii, requiring an assignment of breaches, etc.), "and the Court exercises an equitable jurisdiction over it, by supervising the process upon it. and taking care that execution be not sued out for more than is due; and the usual, as well as the better course is, to move the Court for leave to issue for a particular sum in the first instance. But as the whole subject lies within the limit of the Court's discretion, it follows not that it is the only course. The duty with which the Court charges itself is no more than to see that eventually injustice be not done. An inquiry whether too much is demanded, may be as efficiently originated *after execution*

sued out as before it; and the Court would as readily direct an amicable *scire facias* in the one case as in the other." And Mr. Justice COULTER, in *Reynolds* vs. *Lowry*, *6 Barr*, at page 468, says: "In the case in hand the Court of Common Pleas had and has full power to protect the defendant below from injustice by the *exercise of their equitable discretion.* Our Courts have and do exercise control over their own process, so as to permit no one to do injustice to another through its instrumentality. The party is not driven to another Court to seek protection from a penalty. He is entitled to it in the same Court where the judgment for the penalty was rendered by the due course and propriety of proceeding; and people are bound to know when they give a judgment bond with warrant of attorney for a penalty, the mode and manner of relief which they are entitled to, if more than right is demanded and sought to be enforced."

There is, therefore, nothing of an anomaly in either the substance or form of this judgment, nor are the defendants exposed by it to the injustice which the Maryland Courts appear to have apprehended. At all events, it is a judgment thoroughly established as correct by the law of Pennsylvania, which is the test we are bound to apply.

(*b*) But let it be conceded, contrary to what is said in these cases, not only that it is "the usual, as well as the better course, to move the Court for leave to issue for a particular sum in the first instance," as pointed out by Chief Justice GIBSON, in *Skidmore* vs. *Bradford*, *4 Barr*, but that it is the only course; still the concession will not help the defendant-in-error here. The fact that some preliminary steps are necessary to be observed in obtaining the execution, will not affect the validity of the judgment itself. The judgment made the

Benges the Company's debtor; it established the Company's position as a judgment creditor of the Benges for the amount recovered and costs. That judgment decided the *legal* rights of the parties, and is *res judicata.* It is treated and respected by the Pennsylvania Courts as a valid judgment at law, and conclusive of the *legal* right, though they will give relief, if needed, *upon equitable grounds*, against an execution if endorsed to levy more than the real debt. In supervising the execution, the Pennsylvania Courts neither impeach nor disregard the judgment, but, in the exercise of their equitable powers, prevent a plaintiff from availing himself of it in an unjust and oppressive way. As Chief Justice GIBSON, in *Skidmore* vs. *Bradford*, says: "The Court exercises an *equitable jurisdiction* over it by supervising the process upon it, and taking care that execution be not sued out for more than is due."

There can be no doubt that in Pennsylvania this judgment merged the Company's cause of action on the bond. And if so, then by the Constitution, Art. IV, Sec. 1, and the Act of Congress, the same effect is to be attributed to the judgment by the Courts of Maryland, when introduced as evidence into the judicial tribunals of that State, to which it would be entitled in the Courts of Pennsylvania. In this, the judgment here differs from a foreign judgment, where a plaintiff suing in our Courts, has an election either to proceed on the judgment, or on the original cause of action.

If, therefore, the company be denied the right to maintain an action, or an attachment, in Maryland, on this judgment, which has merged the original cause of action, it will be, practically, without redress against the Benges, outside of Pennsylvania territory.

Now, assuming this to be a valid judgment of a Pennsylvania Court, and the Act of Congress providing that the record of the judicial proceedings of a State "shall have such faith and credit given them in every other Court in the United States as they have by law or usage in the Courts of the State from whence said records were or shall be taken," the Maryland Courts are required to give this judgment of the Pennsylvania Common Pleas the same faith and credit as it has by law or usage in the Pennsylvania Courts. All that the Company asks is, to be placed in the same position here, as in Pennsylvania. The objection (even if true, which it is not), that by the practice of the Pennsylvania Courts no execution could have issued out of the Common Pleas without a previous *scire facias* to ascertain the amount for which execution should be sued out, can have no force here, because that is merely an objection to the execution and not to the judgment. Here the proceedings have not yet reached a stage where such an objection, were it valid, could be effective. The question here is, not in regard to an execution, but whether any, and if so what, judgment can be entered in the Maryland Court.

Should any judgment be entered, it must, of course, be one by which effect shall be given to the Pennsylvania judgment. Were the Court to enter precisely the same judgment that was entered in the Common Pleas, to wit: a judgment for the debt there recovered (the penalty of the bond), effect would be thereby given to that judgment; and subsequent proceedings could ascertain the amount for which execution should be sued out. Should the plaintiff attempt to issue execution, endorsed to levy more than the real debt, the defendant could apply to the Court on motion; or to the Chancery Court, as was the appropriate remedy on bonds with

penalty sued *by writ*, before the passage of the Statute 8 and 9 Will. iii, ch. 11.

If, on the other hand, should the Maryland Court, following its own practice, enter the judgment for the real debt, not the penalty, it would in this way not only give effect to the Pennsylvania judgment as it was actually entered in the Common Pleas, but also ascertain the amount to be endorsed on the execution.

The actual form of the entry of judgment, and award of execution by the Maryland Court would be of little consequence, so long as the proper effect was given to the Pennsylvania judgment.

The proceeding here is a foreign attachment against non-resident debtors. Such a proceeding is not an execution, nor in the nature of an execution, though should the plaintiff in the attachment succeed in getting judgment against the defendants, it might, like other judgments, culminate in an execution. In every such proceeding there is a summons issued for the defendant, and a *scire facias* against the garnishee. The provision of the Maryland Statute is as follows: "There shall be issued with every attachment a writ of summons against the defendant, and a declaration or short note, expressing plaintiff's cause of action, shall be filed, and a copy thereof shall be sent with the writ to be set up at the Court House door by the Sheriff or other officer."—Code 1888, Vol. I, p. 69.

A subsequent section, p. 70, provides that every attachment shall contain a clause of *scire facias* against the garnishee in whose possession the property may be found.

Under these proceedings the defendant is at liberty to come in and contest all his rights; or the garnishee can, as

was actually done in this case, file pleas on his behalf, and he can be heard at every stage of the proceeding, as to the entry of judgment, the condemnation of property, and the award of execution.

Now the great purpose of attachment proceeding is by seizing the property of a debtor, to compel his appearance to answer the demand of the plaintiff, when from non-residence, or flight, he is beyond the process of the judicial tribunals of the State, and on his failure of appearance to apply such property to the just end of satisfying his debts. And it cannot be denied that here, to the extent of the property of John Benge, seized by the Sheriff under this attachment, the Cecil County Court had full jurisdiction under these proceedings to determine the amount for which Benge's property should be condemned, in respect of the cause of action stated in the declaration or short note accompanying the attachment. Under such a proceeding the Maryland Court would give full effect to the Pennsylvania judgment, and even carry the proceeding forward one step beyond where it was left in the Pennsylvania Court—the defendant getting under the Maryland attachment, the benefit of every defense of which he could have availed himself on a *scire facias* out of the Common Pleas on the original judgment. On these attachment proceedings the judgment of the Maryland Court would, in effect, be the judgment of the Pennsylvania Common Pleas for the penalty of the bond, *plus* a *scire facias* out of that Court on the original judgment, and would determine the amount for which the property was to be condemned, and for which execution could issue. It would seem impossible, upon logical grounds, to contend that the rights of both parties to that judgment—plaintiff and defendants—cannot be established and preserved under this Maryland

attachment, on *the ground* that no *scire facias* had issued in Pennsylvania—conceding for the argument, that as a prerequisite to an execution there one was necessary—when it is apparent that the nature of the proceedings on this attachment necessarily involves the inquiry and performs the whole office of a *scire facias* on that judgment.

The record shows, p. 1, that the writs of summons against the Benges were returned *non est;* but John Benge, whose property alone was levied on by the Sheriff, and who only is concerned here, though not formally appearing to the suit, was present in Court at the trial; and the garnishee filed pleas on his behalf and examined him as witness. The printed record, p. 13, states, "Garnishee then proved by John Benge, one of the defendants, that, etc." He therefore had an opportunity to present every defence which he could have presented to a *scire facias* from the Common Pleas on the original judgment.

That the opportunities afforded John Benge in these attachment proceedings, to fairly and fully present his defences, if any, and of whatever nature, to the payment of what is claimed in the declaration or short note, leaves him nothing of which he can justly complain, and has the effect of a *scire facias* on the judgment would appear from the remarks of chief Justice GIBSON, in *Skidmore* vs. *Bradford, 4 Barr, 296, 300.*

In that case an *attachment in execution* on a judgment had been issued without any *scire facias*, or previous inquiry by the Court, as to the *fact of a breach of the covenant and the amount which the plaintiff was entitled to levy.* The attachment was levied on certain moneys in the hands of a garnishee, and afterwards a judgment was entered condemning

them in his hands, which he, (the garnishee), duly paid over to the plaintiff. Subsequently Skidmore, the defendant, as to whom the attachment had been returned *nihil*, moved to set aside the judgment and the attachment in execution. The Court below refused to set them aside, and Skidmore appealed, assigning for error, among others, the above supposed irregularity in the issuing of the attachment. The Chief Justice p. 300, said, " Had the defendant an opportunity, *at any stage of the proceedings*, to show that the execution was not warranted by the judgment? He had not an opportunity to contest the propriety of the execution for arrears of ground-rent, on which the premises were sold; but that proceeding is not before us. The present is *an attachment* for the unmade residue, as well as for stipulated damages incurred by the breach of a collateral agreement; and *it contains a clause of scire facias*, to be served, not only on the garnishee, but also on the debtor, commanding them severally to appear at the next term, and show cause why the debt should not be levied of the effects in the hands of the garnishee. *It is a proceeding in the nature of an action giving a day in Court to each of them;* and if, being duly warned, one of them should slip his time, he might be prejudiced by his laches, but he could not say, that he had not an opportunity to be heard."

Even if there were a difficulty, which we submit there is not, in giving effect in the Maryland Courts to this Pennsylvania judgment, it ought not to be doubted that it would be the duty of those courts to mould any peculiarities existing in their rules of procedure, to meet the law of a judgment coming from a foreign jurisdiction; more especially, when that judgment was a judgment of one of the States of the

Union, and protected by the Constitution and laws of the United States.

(*c*) And now to return to the construction placed on the Statute of 1806, by the County Court, and upon which was based its instruction to the jury. In the opinion of that Court no amount appeared, from the face of the bond and warrant given by the Benges to the plaintiff-in-error to be due, and as the statute only authorizes the prothonotary to enter judgment "for the amount which from the face of the instrument may appear to be due," this bond and warrant, the Court thought, was not such an instrument as the statute contemplated. But if this were so, no judgments under warrants of attorney could be entered on bonds with collateral conditions, *in advance of a breach of the conditions*, even through the agency of an attorney; a position contradicted by all the cases and by the very nature of the security intended to be obtained by these *judgment* bonds. This would certainly be so where the attorney's authority was restricted, as here, to a *named* sum, and that sum named only in the penal part of the bond. In the case at bar, what guide would even an *attorney* have in confessing a judgment, if no amount "appeared to be due" on the face of this bond and warrant? He has no authority to determine the fact of a breach of the condition, or to assess the damages for such breach, and could not do so if he had, in advance of a breach. The statute says: "The amount which from *the face* of the instrument may *appear* to be due."

Now, upon "the face" of this bond, the obligors acknowledged themselves to be indebted to the plaintiff-in-error in the sum of $3,000, and the warrant is to confess a judgment for *that amount*. Clearly the $3,000 is the amount which *appears from the face* of such an instrument to be due. This amount,

thus acknowledged as a debt due the plaintiff-in-error, was then and there instantly payable.

Ashbee vs. *Pidduck*, 1 *Meeson & Welsby*, 564.

How then can it be said that a debt, which is acknowledged to be due and payable on demand, and on which an action may be instituted on the very day of delivery, is not a debt which, from the face of such an instrument, appears to be due? Judgment bonds are given this form of a *named debt, payable on demand*, in order that the judgment, which is to constitute a continuing security for the performance, *at a future day*, of what is named in the condition, may be entered *at once* and become a lien; otherwise the whole object of the security would be defeated.

The case of *Conway* vs. *Halstead*, 73 *Pa. St.*, 357, relied on by the County Court, is not at all adverse to these views. In that case there was a contract for the sale of land at the *rate* of $10 an acre, the quantity of acres to be *ascertained by a survey*. The Court held that the prothonotary could not enter judgment on such an instrument under the Act of 1806; the ground of decision being that upon the face of the instrument the amount did not appear, and could by no possible calculation be made to appear. The Court say, p. 357. "The price was to be at the rate of $10 an acre, and the number of acres was to be ascertained by a survey. Until the number of acres should be determined—a matter wholly outside the face of the paper—the amount of the purchase-money could not be known. The prothonotary had no guide, therefore, in entering the judgment. In fixing the sum he must rely on evidence outside of the writing, and this would not be according to the letter or spirit of the Act, which intended that judgment should be

entered only on the acknowledgment of the party himself, contained in the writing."

It is thus clear that *Conway* vs. *Halstead* has no bearing on our case. In entering the judgment on this judgment bond the prothonotary does not have to go outside of the warrant of attorney, where immediately following the recital of an indebtedness of $3000, which the obligors bind themselves to pay, are the words, "and we hereby authorize any attorney of any Court of record in the State of New York or any other State, to confess judgment against us *for the said sum*, with release of errors, etc." What sum? The sum of $3000, which, in the preceding sentence, had just been acknowledged as the debt.

We respectfully submit, therefore, that both grounds—that taken by the County Court, and also that taken by the Court of Appeals—for refusing to give effect in Maryland to this Pennsylvania judgment fail, and that the judgment below should, consequently, be reversed.

ALBERT CONSTABLE,

WILLIAM T. WARBURTON,

for Plaintiff-in-Error.

Supreme Court of the United States.

October Term, 1885.

THE GROVER & BAKER SEWING MACHINE COMPANY

v.

WILLIAM P. RADCLIFFE.

No. 72.

Brief of Defendant in Error.

This case has been twice before the court of appeals of Maryland. The first appeal is reported in 46 Maryland, 493; the second in 66 Md., 511. It is the second appeal which is now under review in this Court.

STATEMENT.

The case was originally instituted on February 28, 1884, in the circuit court for Cecil county, Maryland, as an attachment on warrant against James Benge and John Benge, then non-residents. The cause of action being a so-called judgment of the court of common pleas of Chester county in the State of Pennsylvania, entered by the prothonotary of the last-named court, on January 3, 1874, against both defendants. James Benge, at the time of executing the

bond, on which the so-called judgment in Chester county was entered, was a citizen of Pennsylvania, while John Benge was a citizen of Maryland, and they were so described in the bond (Record, pages 6 and 14). John Benge continued to reside in Maryland until 1874, when he removed to Delaware (Record, p. 14). The attachment in Cecil county, Maryland, was levied on the property of John Benge alone (Record, pp. 12 and 13), the attempt being to enforce the pretended judgment of the common pleas of Chester county as a judgment *in personam* against John Benge within the State of his former residence.

When the record from the common pleas of Chester county was produced at the trial, the counsel for the garnishee, as he was authorized to do under the laws of Maryland, denied in behalf of the defendants the validity and efficacy of the pretended judgment. The grounds of objection were: 1st. That the prothonotary of the common pleas of Chester county had no authority to enter the so-called judgment, and 2d. That said pretended judgment was void and of no effect within the State of Maryland against the defendant John Benge.

The judgment as entered by the prothonotary, and the bond on which the judgment was based, are given on pages 6 and 7 of the Record.

The plaintiff claimed that the prothonotary had authority to enter the judgment under the provisions of a statute of the State of Pennsylvania, passed in the year 1806, and recited in part on page 12 of the Record.

Numerous prayers were presented by both the plaintiff and garnishee at the trial, all of which were rejected, the court in lieu thereof giving to the jury the single instruction that "the statute law of Pennsylvania did not authorize the prothonotary of the court of common pleas in and for the county of Chester, in the State of Pennsylvania, to

enter the said judgment," and directing a verdict for the defendant. To this ruling the plaintiff excepted.

The court of appeals sustained the instruction and affirmed the judgment below, but assigned a reason different from that given by the judge of the circuit court.

Referring to the opinion of the court of appeals, (see permissible (see Krueger v. Shelby Railroad Co., 116 U. S., 44; Constitution of Md. of 1867, Part II, sections 10 and 16; Public General Laws of Md., vol. II, 1,200, and part 2, rule 8, of this Court), the real ground of that court's decision will become apparent.

Turning from the consideration of the authority of the prothonotary under the Pennsylvania statute of 1806, the court of appeals, after confessing to a strong inclination to the opinion that the Pennsylvania courts would hold in a case between citizens of that State that the present case does not come within the purview of that statute, defines its position as follows:

"But, however this may be, and without stopping to inquire how a judgment on such a bond, so as to be effective for execution can be rendered, there is, we think, a fundamental and fatal objection to the validity of this judgment as against the defendant John Benge. He was a citizen and resident of Maryland both when the bond was executed and when the judgment was entered, and it is land alleged to be his, located in Maryland, which is sought by this attachment to be condemned for the satisfaction of this judgment. He was never served with process, never appeared in person or by attorney, and never had any notice or knowledge of the judgment until a part of his land which lay in Pennsylvania was sold under the writs of *fi. fa.*, and *sends* in 1875. By the terms of his bond he authorized any attorney of any court of record in the State of New York, or any other State, to confess judgment against him for the said sum of $3,000, and he has the right to require that a judgment

rendered against him in the court of another State shall be rendered in strict pursuance of this authority. He did not authorize or consent that a judgment should be entered against him by the prothonotary or clerk, under a special law to that effect of any State, and when such a judgment is produced against him his answer to it *in hæc fœdera non veni* is complete and conclusive. The question then comes to this: Is a judgment *in personam* upon an obligation for the payment of money rendered by a court and under the laws of one State valid as against a citizen of another State, who had never been served with process, had never appeared to the suit in person or by attorney, nor had any other knowledge or notice of it, and can such a judgment be enforced against the property of such a defendant located in the State of his residence? We think it is now clearly settled that such a judgment is entirely void, because the court rendering it had acquired no jurisdiction over the person of the defendant, and that this objection to it may be set up either in a case where an action is brought upon the judgment itself, or where, as here, it is made the foundation of an attachment against the property of the defendant situated in the State of his residence."

I.

This Court has no Jurisdiction.

If any Federal question exist, it must be claimed under the Constitution, Art. IV, section 1, and section 905 of the Revised Statutes, which last, after prescribing the mode of proving the public acts, records, and judicial proceedings of "any State or Territory," enacts, "and the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States, as they have by law or usage in the courts of the State from which they are taken."

The scope and intent of the action of the [illegible] above quoted and the [illegible] cisely defined by this Court in [illegible] 165. The [illegible] should be given to a judgment [illegible] virtue of a statute of that State, where [illegible] forced in Louisiana against a citizen of [illegible] had not been served with process, or voluntarily made defence. The Court says:

"In construing the act of 1790, the law, as it stood when the act was passed, must enter into [illegible] tion; so that the existing defect in the old [illegible] seen, and its remedy by the act of Congress [illegible] Now, it was most reasonable, and [illegible] comity and justice, that among States [illegible] united as ours are, judgments rendered in [illegible] citizens of other States, where defendants [illegible] with process, or voluntarily made defence.

"As these judgments, however, were only [illegible] evidence, and subject to be inquired into by [illegible] sued on in another State, Congress was [illegible] the evil and to provide that such inquiry and [illegible] fence should not be allowed. To this extent, [illegible] in the case of Mills v. Duryee, Congress has power to [illegible] ing the old rule. Nothing more was required.

"On the other hand, the international law as it existed among the States in 1790, was that a judgment rendered in one State, assuming to bind the person of a citizen of another, was void within the foreign State where the defendant had not been served with process, or voluntarily made defence, because neither the legislative jurisdiction nor that of courts of justice had binding force.

"Subject to this established principle, Congress also legislated; and the question is whether it was competent to overthrow this principle, and to declare a new rule which would bind the citizens of one State to the laws of another, as must be the case if the laws of New York bind this de-

fendant in Louisiana. There was no evil in this part of the existing law and no remedy called for, and in our opinion Congress did not intend to overthrow the old rule by the enactment that such faith and credit should be given to records of judgments as they had in the State where made. The language employed is not only fairly open to construction, but the result arrived at by the court below depends on construction, and when we look to the previous law, and the evil intended to be remedied by the framers of the Constitution and by Congress, we cannot bring our minds to doubt that the act of 1790 does not operate on or give additional force to the judgment under consideration; we concur with the various decisions made by State courts, holding that Congress did not intend to embrace judicial records of this description, and are therefore of opinion that the defendant's exception was valid, and that the judgment must be reversed."

In the Lafayette Ins. Co. *v.* French (18 How., 406) Judge Curtis used language equally clear and convincing.

The opinion in D'Arcy *v.* Ketchum was carefully reviewed in Thompson *v.* Whitman (18 Wal., 457), in connection with the entire line of decisions having relation to the matter under discussion, and the Court announced the conclusion (p. 469) that "on the whole we think it clear that the jurisdiction by which a judgment is rendered in any State may be questioned in a collateral proceeding in another State, notwithstanding the provisions of the fourth article of the Constitution and the law of 1790, and notwithstanding the averments contained in the record of the judgment itself." See also Pennoyer *v.* Neff, 95 U. S., 729, where the cases and the principles involved are elaborately and exhaustively considered and finally set at rest.

Without attempting a review of the cases at this late day, certain general propositions may be taken as established:

The motion to dismiss is in line with the recent case of Blount *v.* Walker (134 U. S., 607), where the Chief-Justice, speaking for the Court, said:

"The supreme court of South Carolina did not refuse to the judgment of the probate court of North Carolina full faith and credit." * * * The probate of Mrs. Blount's will in North Carolina established that the will was executed according to the law of the State where she was domiciled, but it did not establish that the will was executed according to the law of South Carolina, as it is conceded it was not, when, therefore, the supreme court of South Carolina, in construing Mrs. Harris' will, arrived at the conclusion that the estate of the latter would only pass to such person as might receive an appointment by a will duly executed according to the laws of South Carolina, that was an end of the case, and whether that conclusion was right or wrong is a matter with which we are not concerned. If we were of a different opinion, and, entertaining jurisdiction, were to reverse the judgment of the supreme court of South Carolina, we should do it upon the ground that that court erred in the construction of Mrs. Harris' will, and not upon any ground connected with the judgment of the probate court of North Carolina, which could not and did not determine that question."

This language has a singular pertinency to the case in hand. The court of appeals received the record as duly authenticated, and prepared to give the judgment therein certified full faith and credit under the Constitution, and full force and effect under the act of Congress; but when tested by the criterion of the law of Maryland, it turned out to be no judgment, because no jurisdiction had ever been acquired over the person of the defendant against whom the law of Maryland was invoked. This went to the jurisdiction of the court of common pleas of Chester county, and with respect to it, the court of appeals of

U. S., 200; Chapman *v.* Goodnow, 123 U. S., 548; Miller *v.* Brown, 16 Peters, 525; Lawler *v.* Walker, 14 How., 152; Railroad Co. *v.* Rock, 4 Wal., 177; Adams Co. *v.* Burlington & Mo. R.R. Co., 112 U. S., 127; Rio Grande Railroad Co. *v.* Vinet, 132 U. S., 565.

II.

THE COURT OF APPEALS DID NOT ERR IN HOLDING THAT THERE WAS NO VOLUNTARY APPEARANCE, NOR WAIVER OF PROCESS BY JOHN BENGE.

The bond (Record, 6 and 7) makes plain the intention of the parties. James Benge, having obtained a credit with the Grover & Baker Sewing Machine Company for machines, findings, &c., of that company, and other articles to be thereafter supplied, John Benge became his surety upon terms accurately defined. The recital, condition, and appended explanatory clause, clearly show that there was no present indebtedness. Every obligation was prospective. John Benge, as surety, bound himself only to make good to the company the losses it might sustain for or on account of all sewing machines, findings, silks, and threads, or other articles, including promissory notes and other property, that might from time to time *thereafter* be sold, consigned, supplied, or otherwise entrusted to him, the said James Benge, "at the time or times when each and every liability *shall become due and payable*, or at such time and times for which payment of the same may hereafter, with or without notice to the said John Benge, be extended." It is impossible to construe this language to mean anything else than a purpose to establish a future liability, and only a future liability, on the part of John Benge, for certain specified breaches of contract, contin-

[illegible] in the [illegible]
[illegible] beyond all [illegible]
the amount [illegible]
that the [illegible]
ing security [illegible]
due and [illegible]
James Benge "to the amount [illegible]
this bond."

Here are repeated averments that the penalty of the bond was not what John Benge promised to pay, but only the actual indebtedness which might thereafter appear. James Benge is the surety of Bradburn, and if any such liabilities had become due and been demanded [illegible] plies the adjustment of accounts between the surety and James Benge, the ascertainment of balances, if any, and demand for the payment of those balances before the liability of the surety would attach. And the statute [illegible] prudently gave authority only to [illegible] any attorney of any court of record in the State of New York to [illegible] to confess judgment, well knowing and supposing, that any attorney called upon to exercise that authority, would require that the liability under the terms of the bond should be first ascertained with precision, and that whenever [illegible] the judgment might be made to assume, whether for the whole penalty or not, it should at least be accompanied with a defeasance, declaring that the judgment should be released on payment of the sum actually due. Having secured for himself this protection against overcharge and extortion, John Benge has a right to insist that no judgment should be entered against him, except by the interposition of his attorney, who would guard against every attempt at imposition.

Now, how was the judgment, which the plaintiff in error seeks to enforce, entered? Not by an attorney of the State of New York (the only State mentioned by statute in

the bond) nor of any other State; but by the prothonotary of the court of common pleas of Chester county in the State of Pennsylvania, under an act of the legislature of that State (Record, 12). There were no accounts stated, or interchanged, no sum ascertained or made appear to be due, but a judgment absolute was extended for the entire penalty and an execution ordered to enforce it.

So far as the courts of Maryland are concerned, it is submitted that it is immaterial how, or to what extent, the courts of Pennsylvania may attempt to give effect to the judgment thus entered between her own citizens. The point now pressed is, that for all purposes of extra-territorial enforcement against John Berge, a non-resident, this judgment was without warrant or authority, and, therefore, void.

But we may, nevertheless, seek to interpret the Pennsylvania statute. Taking the whole act together and noting particularly the concluding clause, it is evident that the statute was intended to save expense to defendants and to provide only for cases where the amount due, after being ascertained by the parties, might be stated upon the face of the instrument. The statute provided for cases so simple as not to need the services of an attorney, and to require nothing more than the agency of a clerk to enter a judgment upon terms and for a sum agreed upon and distinctly set out. If we would know what the powers of the prothonotary in the cases provided for are, and how they differ from those of an attorney, we need only to read the opinion of the supreme court of Pennsylvania, in Connay *v.* Halstead, delivered on May 17, 1873, and reported in 73 Pa., 354. The court say:

"By the act of 24th February, 1806, it is made the duty of the prothonotary upon the application of the holder of a bond or other instrument containing a warrant of attor-

warrant is based not upon any mention by name of that particular State but because after naming the State of New York the words "or any other State" are added. As well might the counsel claim that any other statute of any other State of the Union shall be read into this bond, and, if any particular statute of any particular State, then all other statutes of all other States; and thus, that this plain farmer of Maryland, when he signed this bond, and filled it with safeguards to protect himself against extortion and imposition, must be held to know every section and paragraph that could be cited against him from the law and the statutes of 38 States, each with its separate and independent, and in many cases conflicting, systems of jurisprudence and practice. Under a process of reading-in, so stupendous, this simple bond of suretyship would be expanded over the broad expanse of heaven and fill the whole range of judicial vision with its gigantic proportions. If this be the standard by which this case is to be adjudicated, then Solomon in all his glory and wisdom could not abide the tests to which John Benge, the Maryland farmer, must be subjected. For this Court has held in Hanley *v.* Donoghue, 116 U. S., 1, that in Maryland the laws of other States are facts, which, like other facts, must be proved, and decided the case upon the ground that the effect which a judgment rendered in another State has in Maryland is a matter-of-fact. The Pennsylvania statute of 1806 is then a fact and not a law for a citizen of Maryland, and if it be true that that statute must of necessity be read into the bond of John Benge, he may with equal propriety be bound to know all other facts. That would charge him with a flood of information but little short of omniscience, and virtually hold him responsible as a depository of universal knowledge, and this famous bond would then be distended with volume upon volume and tome upon tome until, to borrow an expression from the last verse of the gospel of